IN THE PARSI CHIEF MATRIMONIAL COURT AT BOMBAY

PETITION NO.4 OF 2004
IN
P.M. SUIT NO.12 OF 2004

Kety Dinshaw Jokhi)
of Mumbai Parsi Indian Inhabitant)
at present temporarily residing)
at 122A, Kismet Building, Colaba)
Mumbai-400 005.)..PETITIONER

Versus

Dinshaw Dhunjishaw Jokhi,)
of Mumbai Parsi Indian)
Inhabitant, residing at F-22,)
Ground Floor, Godrej Baug, Off.)
Napeansea Road, Mumbai-400 036.)..RESPONDENT

Mr. M.S. Sanghvi i/b. Gagrat & Co., for the Petitioner
Ms. F.D. Contractor for Respondent.

CORAM: F.I. REBELLO, J.
DATE : 11th October,2004

ORAL JUDGMENT:

1. By the present petition the petitioner has prayed for the following reliefs:-

(a) that this Hon'ble Court be pleased to declare that the Petitioner alone and not the Respondent is entitled to right of exclusive residence and occupation of Flat No.F-22 Godrej Baug, Ground Floor, Off Nepeansea Road, Mumbai-400 036;

(b) that the Respondent be ordered and decreed and directed by a mandatory order and injunction of this Hon'ble Court to remove himself and his belongings and to hand over to the petitioner forthwith peaceful and vacant possession of suit flat No.F-22, Ground Floor, Godrej Baug, Off Nepeansea Road, Mumbai-400 036 together with her

furniture, fixtures, fittings and the articles belonging to her."

At the outset on behalf of the respondent grant of these reliefs have been opposed on the ground that this Court would not have jurisdiction on two counts. Firstly, it is contended that the suit No.12 of 2004 has been disposed of by the order dated 5th February, 2004. Nothing further survives in the suit and consequently this Court has become functuous officio. Secondly, it is contended that this Court has no jurisdiction to grant the relief as prayed for in a matter wherein the petitioner contends an exclusive interest in the property. The jurisdiction of the Court under the Parsi Marriage and Divorce Act, 1936 is limited at the highest to the property given to the couple at the time of the marriage. In the instant case admittedly that is not the issue as the petitioner claims an exclusive right in the property.

2. Heard the learned Counsel. The first point as to the jurisdiction of this Court will have to be accepted. Once the suit itself has been disposed of this Court becomes functuous offico and cannot entertain a petition for the reliefs as prayed for even assuming that the parties in the consent terms had left open the issue of exclusive possession of Flat No.F-22, Godrej Baug, Ground Floor, Off Nepeansea Road, Mumbai-400 036. On that count itself the petition will have to be rejected. 3. The next issue is whether it is open to this Court to consider the reliefs as prayed for. A bare perusal

of Section 42 would show that in any suit under the Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife. The requirements are that the property has to be presented at or about the time of marriage which may belong jointly to both the husband and wife.It is thus clear that the jurisdiction of the Court in a suit filed under this Act are in respect of suits as set out in Chapter IV, which deal with nullity of marriage, divorce and other consequential reliefs. The limited jurisdiction of the Special Court in the mater of property is in respect of joint property and some other instances. Normally it is the Civil Court considering the provisions of Section 9 of C.P.C. which will have jurisdiction to try all suits unless this jurisdiction is excluded by any special enactment. The exclusion is only to the extent of Section 42. In other words the jurisdiction of the Civil Court in respect of the property other than joint property given or or about the time of marriage is not ousted. Considering the above this Court has no jurisdiction in respect of the subject matter of the present petition which the petitioner claims as per exclusive property. Consequently the petition stands rejected.

(F.I.REBELLO, J.)